SENATE BILL No. 50

Introduced by Senator Polanco

May 17, 2001

An act to add Sections 39055.8, 39621, 39622, 40714.7, and 40724 to the Health and Safety Code, and to, add Sections 25141.5, 25142, 25143, 25144, 25145, 25146, 25147, 25545, 25546, and 25547 to the Public Resources Code, and to add Sections 359.5, 359.6, and 365.1 to, the Public Utilities Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as introduced, Polanco. Energy resources.

Existing law requires the State Air Resources Board to inventory sources of air pollution within air basins of the state and to review each district's air emission reduction and credit trading programs to ensure that the programs comply with specified requirements. Existing law further requires air pollution control districts and air quality management districts to issue expedited permits for the operation of powerplants in the state that permit the powerplants to operate if they meet specified air emissions standards prescribed by state and federal law.

This bill would require the state board, in consultation with districts in the state and with the Secretary for Environmental Protection, to seek approval for amendments to the State Implementation Plan (SIP), if necessary, in accordance with the federal Clean Air Act to authorize the issuance by districts of permits or other exemptions to applicable air emissions standards for ultra-clean thermal powerplants, as defined. The bill would require that districts apply special rules for the operation of air emissions offsets programs governing the certification of

ultra-clean thermal powerplants, as prescribed. The bill would require each district to consult with the state board and the Secretary of Environmental Protection for the purpose of developing and implementing exemptions or expedited procedures for permitting ultra-clean thermal powerplants, and to make all necessary modification to its regulations, on an emergency basis, to implement those exemptions or procedures at the earliest possible time. By imposing various duties on air pollution control districts and air quality management districts with respect to the processing of expedited permit applications for ultra-clean thermal powerplants, the bill would impose a state-mandated local program.

Existing law requires the State Energy Resources Conservation and Development Commission to issue permits for the operation of powerplants.

This bill would require that the commission give priority to the processing of applications for certification of ultra-clean powerplants, as defined, and expedite the processing of those applications, to the greatest extent possible, consistent with applicable requirements of law.

The bill would require the executive director of the commission, not later than January 30, 2002, and on the first business day of the months of January, April, July, and October of each year thereafter, to determine the lowest total air emissions pollutant standard that would be applied to the certification of ultra-clean thermal powerplants. The bill would provide that an applicant for certification of an ultra-clean thermal powerplant is entitled to use compliance with the strictest applicable air quality standards of the air district in which the powerplant is to be located to demonstrate that the proposed powerplant will not significantly impact air quality or public health in the district, and for purposes of determining the compliance of the applicant with the district's air emissions standards, and eligibility for air emissions offsets. The bill would prohibit the commission, in certifying a site for an ultra- clean thermal powerplant, from applying any standard adopted pursuant to a specified provision governing design and operational standards for the designing, siting, and operation of powerplants that is more stringent than otherwise applicable standards adopted by local, regional, state, or federal agencies.

The bill would require the commission, not later than July 1, 2002, to amend its regulations governing the certification of powerplants to incorporate procedures for the certification of ultra-clean powerplants.

Existing law requires that the California Independent System Operator (CALISO) ensure the efficient use and reliable operation of the electric transmission grid.

This bill would require that CALISO, in planning and operating all portions of the transmission system under its jurisdiction, including its involvement in addressing system impacts from interconnection of new generation facilities and upgrades in components of the transmission system, and in allocating transmission capacity and dispatching generation, to give priority to new generation from ultra-clean thermal powerplants. The bill would further require CALISO, in the event of a transmission system overload, to give priority to the operation of ultra-clean powerplants, and the protection of those powerplants from generation curtailments and congestion mitigation alternatives, except as required for system integrity and safety.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The rate of growth in electric load in this state has increased rapidly in recent years due, in large part, to the increasing population and the success of the state's economy.

(b) The restructuring of the electricity industry, requiring a period of transition from a more highly regulated electricity generation industry to a competitive electricity generation market, has led to a lack of investment in new generation capacity.

(c) Approximately two-thirds of the state's electricity generating plants previously owned by the state's big utilities are 30 years old or older. These plants are inefficient and highly polluting in comparison to powerplants currently proposed, and they are becoming less reliable as they age.

(d) As a result of the rapidly increasing electric load, the lack of investment in new generation capacity, and other factors, there currently exists a severe shortage of generation capacity to meet the existing and near-future load needs of this state. This situation has created a supply and demand imbalance, thwarted the competitive marketplace goals of deregulation, and has led to electric supply alerts and curtailments, system reliability problems, and high electricity prices.

(e) In an attempt to relieve the shortage, the older, inefficient, highly polluting powerplants are running longer and harder than ever. In addition, many businesses are installing backup diesel generators, which are also highly polluting, to protect themselves from rolling blackouts. California cannot allow the current energy crisis to be used as an excuse for reliance on these environmentally unfriendly sources of power.

(f) Unless and until additional generation capacity is created, this supply and demand imbalance will worsen, posing potentially serious problems for the public health, safety, and welfare.

(g) California's environment is of paramount importance to the people of this state. Any steps taken to remedy the shortage in electric generation capacity must protect the state's environment and the health of its residents.

(h) The current electric generation capacity shortage can be ameliorated by creating regulatory incentives, encouraging creative solutions to offset requirements, and expediting to the greatest extent possible procedures for the siting of new proposed generation facilities that are the cleanest, most efficient, and most environmentally protective.

(i) Not all new powerplants produce the same pollutant emissions. Technology now exists for ultra-clean powerplants that are much cleaner than most of the powerplants now being sited. Technology will be improving to produce even cleaner powerplants, and state policy should encourage such improvements.

(j) Favoring ultra-clean powerplants will not slow the development of new powerplants to meet the current, urgent needs of the state. In fact, favoring ultra-clean powerplants will deliver dual benefits by speeding the siting of those powerplants and encouraging the development and use of ever-cleaner technology to provide environmental benefits.

(k) Even the cleanest possible powerplants face delays in development. Two major causes of delay are: (1) the lack of emission offsets required under offset programs; and (2) the substantial delay and high cost caused by uncertainty about whether meeting the strictest applicable air quality standards is sufficient to avoid lengthy environmental impact studies.

(*l*) The offset programs applicable to natural gas-fired powerplants are aimed at reducing pollutants that are primarily the result of mobile sources. However, the offset programs require powerplants to obtain stationary source offsets that simply do not exist and cannot feasibly be created. This makes siting new, clean powerplants both slower and more costly.

(m) The existing, strictest air quality standards are typically state or local air district standards that are far stricter than federal standards, and have been developed specifically to protect the environment and public health, based on very conservative methods to provide extra margins of protection. These standards specify the maximum emissions allowed from new sources and establish the level of emissions from a powerplant that would be considered significant.

(n) Despite the careful work that has been undertaken to develop and continually refine these standards, a new powerplant that will operate within these standards, and at levels exceeding those standards, still must undertake very detailed and lengthy analysis of air emissions impacts, once the emissions from the plant have been determined. In addition to delays and increased costs, this creates uncertainty for a project applicant in the siting process and presents opportunities for post-approval litigation, despite the thoroughness of the standards-setting process and review by the State Energy Resources Conservation and Development Commission.

(o) Eliminating the intractable offset problem and trusting the already existing air quality standards to set the benchmark against which a powerplant is measured could greatly speed up the process and eliminate unnecessary costs and uncertainty, while still protecting the environment. The cleanest possible powerplants should be treated this way.

(p) The existing powerplant site certification program prescribed in Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code should be modified by

directing the staff of the State Energy Resources Conservation and Development Commission to give first priority to the processing of applications for ultra-clean thermal powerplants, and to expedite review of those applications to the greatest extent practicable.

(q) The United States Environmental Protection Agency, which has the responsibility to administer various federal air permitting programs, has delegated the administration of many of these programs to local air districts. Under the present regulatory scheme, thermal powerplants that are subject to the State Energy Resources Conservation and Development Commission's certification process must also acquire permits from local air districts pursuant to these delegated federal air permitting programs. Changes to the existing siting process for ultra-clean thermal powerplants may require state and local agencies to work together to seek complimentary changes in the administration of delegated federal air permitting programs in order to ensure that the State Energy Resources Conservation and Development Commission's new processes are not frustrated by lengthy reviews of applications for permits from local air districts.

(r) The increasing demand for electricity in this state, coupled with the lack of existing transmission system upgrades and new construction, has led to increased congestion and reliability problems on the existing transmission system. In order to encourage the development of ultra-clean powerplants, new ultra-clean powerplants should be given priority to use essential facilities, including the transmission system, natural gas capacity, wastewater disposal capacity, and air quality offset banks, and should be protected from generation curtailments, congestion mitigation alternatives, and transmission system upgrade requirements to the maximum extent possible.

SEC. 2. Section 39055.8 is added to the Health and Safety Code, to read:

39055.8. ''Ultra-clean thermal powerplant'' shall have the same meaning as in Section 25141.5 of the Public Resources Code.

SEC. 3. Section 39621 is added to the Health and Safety Code, to read:

39621. The state board, in consultation with districts in the state and with the Secretary for Environmental Protection, shall seek approval for amendments to the State Implementation Plan,

if necessary, in accordance with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) to authorize the issuance by districts of permits or other exemptions to applicable air emissions standards for ultra-clean thermal powerplants.

SEC. 4. Section 39622 is added to the Health and Safety Code, to read:

39622. To the extent permitted by federal law, the State Implementation Plan shall be amended to permit a proposed facility that qualifies as an ultra-clean thermal powerplant to obtain a general Title V permit without undergoing an individualized district review process.

SEC. 5. Section 40714.7 is added to the Health and Safety Code, to read:

40714.7. Notwithstanding any other provision of law, to facilitate the siting of the cleanest and most efficient thermal powerplants, each district shall apply the following special rules for the operation of air emissions offset programs governing the certification of an ultra-clean thermal powerplant:

(a) The state board and every air district shall allocate emission offset credits under their control to an ultra-clean thermal powerplant as first priority.

(b) A new offset program shall be created within each air district or air basin, if smaller, under which any new renewable electric power generation source will create offsets in an amount equal to the annual emissions avoided, and those offsets may be sold to and used only by new ultra-clean thermal powerplants. The annual emissions avoided will be calculated as the difference between best available control technology (BACT) level of emissions for a natural gas fired powerplant in that location and the emissions, if any, of the renewable source for each pollutant of natural gas-fired combustion turbine powerplants, as determined by the applicable air district.

(c) Notwithstanding any other law, rule, regulation, or order, including any local air district rules, the air district with jurisdiction over a proposed ultra-clean thermal powerplant site shall, within 90 days from the date of receipt by the State Energy Resources and Development Commission of the Application for Certification for the powerplant, meet all of the ultra-clean thermal powerplant's offset obligations under this section. The offset program may include all of the following:

(1) Purchase of existing and commercially available credits on the open market.

(2) Purchase and installation of emission control equipment for nonregulated sources of emissions within the district, pursuant to Section 40714.5, where the district has identified the source, quantified the cost, and confirmed the willingness of the source to accept such installation.

(3) Purchase and installation of emission control equipment on regulated sources of emissions within the district, where the offsets are quantified as the amount of reduction from the sources' actual emissions for the past two-year reporting period to the forecast amount of emissions from the sources after installation of that equipment.

(4) Purchase and installation of renewable technology or energy efficiency technology that reduces the demand for electricity within the district.

(5) Financial support of air quality or public health programs conducted by or endorsed by the district, or by a local public agency, including, but not limited to:

(A) Local air quality studies to identify strategies to improve local air quality.

(B) Health clinics or other medical services.

(C) Fleet conversion of buses, trucks, or other vehicles from diesel fuel to natural gas or other low- or zero-emission technologies.

(D) Fleet replacement purchases of low- or zero-emission vehicles.

(E) Any combination of those programs.

(6) Other measures that will advance the district's program for improving air quality or public health within its jurisdiction.

(d) The district shall use its discretion in determining the adequacy of the program to meet the ultra-clean thermal powerplant's offset obligations. Because this process requires the exercise of policy judgment and creativity by the district, the district's determination is not subject to judicial review.

(e) The applicant may elect to accept the offset program developed for the powerplant or to proceed under the district's standard rules for meeting offset requirements.

(f) For purposes of this subdivision, ''ultra-clean thermal powerplant'' shall have the same meeting as provided in Section

25141.5 of the Public Resources Code, and shall be determined in accordance with Section 25545 of the Public Resources Code.

SEC. 6. Section 40724 is added to the Health and Safety Code, to read:

40724. Each district shall consult with the state board and the Secretary for Environmental Protection for the purpose of developing and implementing exemptions or expedited procedures for permitting ultra-clean thermal powerplants, and shall make all modifications to its regulations, on an emergency basis, to implement those exemptions or expedited procedures at the earliest possible time.

SEC. 7. Section 25141.5 is added to the Public Resources Code, to read:

25141.5. (a) ''Ultra-clean thermal powerplant'' means a thermal powerplant that meets all of the following conditions:

(1) The air pollutant emissions per megawatt of generating capacity are not greater than the lowest total air pollutant emissions benchmark in effect as of the date that the application is determined to meet the requirements of Section 25520.

(2) Will emit less than the applicable emission standards for ''Best Available Control Technology'' and ''Maximum Achievable Control Technology'' for all applicable air contaminants in effect as of the date that the application is determined to meet the requirements of Section 25520.

(3) Does not use water for cooling purposes other than recycled water as defined in subdivision (n) of Section 13050 of the Water Code.

(4) Provides an efficiency factor of not less than 7500 Btu per kilowatt hour.

(b) An ultra-clean thermal powerplant is not a geothermal powerplant, a solar thermal powerplant, or a nuclear fueled powerplant.

SEC. 8. Section 25142 is added to the Public Resources Code, to read:

25142. ''Potential to emit'' means the maximum capacity of a thermal powerplant to emit total air pollutant emissions under its physical and operational design. Any physical or operational limitation on the capacity of a thermal powerplant to emit an air pollutant, including air pollution control equipment and restrictions on the type or amount of material combusted, stored,

or processed shall be treated as part of its design provided that the limitation is enforceable. Fugitive emissions associated with a thermal powerplant and secondary air pollutants that are formed as the result of air pollutant emissions from a thermal powerplant shall be included in the potential to emit.

SEC. 9. Section 25143 is added to the Public Resources Code, to read:

25143. ''Total air pollutant emissions'' means the combined emissions of all air contaminants for which an emission standard exists under federal or state law, measured in pounds per megawatt of generating capacity.

SEC. 10. Section 25144 is added to the Public Resources Code, to read:

25144. ''Air contaminant'' shall have the same meaning as defined in Section 39013 of the Health and Safety Code.

SEC. 11. Section 25145 is added to the Public Resources Code, to read:

25145. ''Emission standards'' shall have the same meaning as defined in Section 39027 of the Health & Safety Code.

SEC. 12. Section 25146 is added to the Public Resources Code, to read:

25146. ''Lowest total air pollutant emissions benchmark'' means the benchmark number published by the executive director of the commission in accordance with Section 25545.

SEC. 13. Section 25147 is added to the Public Resources Code, to read:

25147. ''District'' shall have the same meaning as defined in Section 39025 of the Health and Safety Code.

SEC. 14. Section 25545 is added to the Public Resources Code, to read:

25545. Not later than January 30, 2002, and on the first business day of the months of January, April, July, and October of each year thereafter, the executive director shall determine the lowest total air pollutant emissions benchmark that would be applied to the certification of ultra-clean thermal powerplants, as follows:

(a) The executive director shall identify the three thermal powerplants in this state that have the lowest potential to emit per megawatt of generating capacity. In making this determination, the executive director shall consider all powerplants that have been

certified by the commission or for which an application has been determined by the commission to meet the requirements of Section 25520 and has not been denied.

(b) The mathematical average of the potential to emit per megawatt of generating capacity of the three identified thermal powerplants shall be the lowest total air pollutant emissions benchmark. Upon each such determination, the executive director shall promptly inform the commission and make available to the public information on the current lowest total air pollutant emissions benchmark.

SEC. 15. Section 25546 is added to the Public Resources Code, to read:

25546. Notwithstanding any other provision of law, the commission and its staff shall give priority to the processing of applications for certification of ultra-clean thermal powerplants and shall expedite the processing of those applications to the greatest extent possible consistent with applicable requirements of law.

SEC. 16. Section 25547 is added to the Public Resources Code, to read:

25547. Notwithstanding any other provision of law:

(a) The strictest applicable air quality standards of the air district shall be the standards for determining the existence of any significant impact to air quality, and the existence of any significant impact to public health, due to air emissions from an ultra-clean thermal powerplant. The applicable air district shall, in its determination of compliance, determine whether the strictest applicable air quality standards are met.

(b) An applicant for certification of an ultra-clean thermal powerplant shall be entitled to use compliance with the strictest applicable air quality standards of the air district in which the powerplant is to be located to demonstrate that the proposed powerplant will not significantly impact air quality or public health in the district, and for purposes of determining the compliance of the applicant with the district's air emissions standards, and eligibility for air emissions offsets.

(c) In certifying a site for an ultra-clean thermal powerplant, the commission shall not apply any standard adopted pursuant to Section 25216.3 that is more restrictive than otherwise applicable standards adopted by local, regional, state, or federal agencies.

(d) Except as provided in subdivisions (a), (b), and (c) of this subdivision and in Section 25546, an application for certification of an ultra-clean thermal powerplant shall be otherwise evaluated by the commission in the same manner as other thermal powerplants.

SEC. 17. Section 359.5 is added to the Public Utilities Code, to read:

359.5. (a) In planning and operating all portions of the transmission system under its jurisdiction, including its involvement in addressing system impacts from interconnection of new generation facilities and upgrades in components of the transmission system, and in allocating transmission capacity and dispatching generation, the California Independent System Operator shall give priority to new generation from ultra-clean thermal powerplants sited in accordance with Warren-Alquist State Energy Resources Conservation and Development Act (Division 15 (commencing with Section 25000) of the Public Resources Code). The California Independent System Operator shall not require an ultra-clean thermal powerplant, as defined in Section 25141.5 of the Public Resources Code, to reconductor lines, reconfigure grids, or otherwise upgrade transmission systems in order to construct or operate such facility, or access the ISO-controlled grid, unless it determines that such upgrade is required even after giving highest priority access to that ultra-clean thermal powerplant.

(b) In planning and operating all portions of the transmission system under their control, electric corporations and electric utilities shall give priority in allocating transmission capacity to new generation from ultra-clean thermal powerplants sited in accordance with the Warren-Alquist State Energy Resources Conservation and Development Act (Division 15 (commencing with Section 25000) of the Public Resources Code).

SEC. 18. Section 359.6 is added to the Public Utilities Code, to read:

359.6. In the event of a transmission system overload, the California Independent System Operator shall give priority to the operation of ultra-clean thermal powerplants, and the protection of those powerplants from generation curtailments and congestion mitigation alternatives, except as required for system integrity and safety.

SEC. 19. Section 365.1 is added to the Public Utilities Code, to read:

365.1. In exercising its jurisdiction over electric corporations and public utilities that own or operate transmission and distribution systems, the commission shall give priority to new generation from ultra-clean thermal powerplants sited in accordance with the Warren-Alquist State Energy Resources Conservation and Development (Division 15 (commencing with Section 25000) of the Public Resources Code).

SEC. 20. Not later than July 1, 2002, the State Energy Resources Conservation Development Commission shall amend its regulations governing the implementation of Chapter 6 (commencing with Section 25500) to incorporate procedures for the certification of ultra-clean powerplants, as defined in Section 25141.5 of the Public Resources Code.

SEC. 21. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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